



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDV/162106

PRELIMINARY RECITALS

Pursuant to a petition filed November 21, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on January 06, 2015, at Waukesha, Wisconsin.

The issue for determination is whether Waukesha County Health and Human Services correctly determined that the Petitioner divested \$5,735.00.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Nicholas Kush, Economic Support Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On August 29, 2014, the Petitioner submitted an application for Medicaid benefits, seeking benefits from August 1, 2014 forward. (Testimony of Mr. Kush)

3. On November 4, 2014, the agency sent the Petitioner a Negative Notice, advising him that his application for healthcare was denied for the period of August 1, 2014 to August 23, 2014, because he divested \$5,735.00. (Exhibit G)
4. ■ the Petitioner's ex-wife and power of attorney, submitted a request for fair hearing on behalf of the Petitioner that was received by the Division of Hearings and Appeals on November 21, 2014. (Exhibit 1)
5. On March 2, 1993, a Judgment of Divorce was entered, dissolving the marriage between Petitioner and ■ Incorporated by reference into the Judgment of Divorce was a marital settlement agreement entered into by the parties on January 14, 1993. (Exhibit 2, pgs. 10, 14 and 15)
6. The January 14, 1993 marital settlement agreement was actually a promissory note which stated the following:

In lieu of child support or maintenance, [Petitioner], the undersigned, promises to pay ■, or order, the sum of \$15,480.00, principal and interest of 0 percent (0%) per annum, payable in monthly payments of \$322.50 over four years, beginning October 15, 1993.

In the event any such party to this note defaults in the payment of any obligation due hereunder, for more than 90 days, then, at the option of the holder hereof, this note together with accrued interest at the rate of 6% per annum, shall become immediately due and payable. In the even the indebtedness evidenced hereby is collected through court action, the holder shall be entitled to recover reasonable attorney's fees and court costs.

(Exhibit 2, pg. 16)
7. The Petitioner did not the make regularly monthly payments of \$322.50 to maintain the zero percent interest rate. He made two payments in 1993, six payments in 1994, four payments in 1995, six payments in 1996, which were less than the required \$322.50 installment, three payments in 1997 which were less than the required \$322.50 installment, one payment of \$500 in 1998, one payment of \$100 in 1999, one \$3000 payment in August 2005 and one \$900 payment in October 2005. This left a principal balance of \$5735.00. (Exhibit 2, pg. 17)
8. ■ did not aggressively seek repayment of the note, because she understood that the Petitioner's employment was not always consistent and he eventually became very ill and was unable to work. (Testimony of ■)
9. On June 24, 2014, the Petitioner instructed ■ to write a check to herself for \$5735.00 to pay off the principal owed her, pursuant to the promissory note / marital settlement agreement. (Exhibit 2, pg. 8)

DISCUSSION

A divestment occurs when the applicant disposes of an asset/resource for less than fair market value. *See* the administrative rule concerning divestments that occurred after August 9, 1989, under Wis. Admin. Code §DHS 103.065 (4), which states, "An institutionalized individual or someone acting on behalf of that individual who disposes of resources at less than fair market value ... shall be determined to have divested. A divestment results in ineligibility for MA for the institutionalized individual..." *Wis. Admin. Code §DHS 103.065 (4)(a); See Also Wis. Stats. §49.453(2); 42 U.S.C. §1396P(c)(1)(A) and (B)*

However, when a satisfactory showing is made to the State agency that the assets were transferred for a purpose other than to qualify for medical assistance, the transfer is not considered a divestment. *42 U.S.C. §1396P(c)(2)(C)(ii); See also MEH §17.4*

The divested asset at issue is the \$5,735.00 paid to ■ in fulfillment of the promissory note / marital settlement agreement. It is the agency's position that under Section 17.12.1 of the Medicaid Eligibility

Handbook, the promissory note constitutes a divestment because the 6% interest rate triggered by Petitioner's default on the agreement, was an inadequate interest rate. However, in January 1993, interest rates on mortgages ranged from a low of 5.08% to a high of 8.29%. See <http://www.hsh.com/mtghst/mortgage-rates-by-week/1993/> As such, the 6% rate was reasonable.

Even if the promissory note was faulty, the \$5,735.00 payment was not made with the intention of making the Petitioner Medicaid eligible. The record clearly establishes that it was made to fulfill a support obligation created in 1993, twenty years before the Petitioner's health declined and he found himself in need of Medicaid benefits.

█ testified credibly that she did not aggressively pursue further payments on the promissory note because she believed that the Petitioner did not have the money to pay her due to his intermittent employment as an iron worker and because he eventually became too sick to work. However, after becoming his power of attorney, she gained access to the Petitioner's bank accounts and discovered that he had the money that he owed her. █ testified that she spoke to the Petitioner about this, and he agreed to pay off the principal owed on the promissory note. █'s testimony is corroborated by the Judgment of Divorce, by the promissory note/marital settlement agreement, her ledger of all the payments made by the Petitioner and by a letter signed by the Petitioner, confirming his intent.

Because the payment of the \$5,735.00 was made with the intent to finally pay off a 20 year old debt and not to make the Petitioner Medicaid eligible, the transfer of that money does not constitute a divestment pursuant to *42 U.S.C. §1396P(c)(2)(C)(ii)*; See also *MEH §17.4*

CONCLUSIONS OF LAW

Waukesha County incorrectly determined that the payment of \$5,735.00 to █ constituted a divestment.

THEREFORE, it is

ORDERED

That Waukesha County certify the Petitioner for Medicaid benefits effective August 1, 2014 forward. The agency shall take all administrative steps necessary to complete this task within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of January, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 26, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability